

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LEVELFIELDS, INC.,

Plaintiff,

v.

REDDIT, INC.,

Defendant.

Case No. [24-cv-02760-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 21

Defendant Reddit, Inc. (“Reddit”) moves to dismiss this putative class action case – challenging Reddit’s practice of charging its advertiser clients for “fraudulent clicks” – because plaintiff LevelFields, Inc. (“LevelFields”) lacks standing as it has not sufficiently stated facts showing it was charged for fraudulent clicks and has not stated a claim for breach of contract or a claim for equitable relief under California’s Unfair Competition Law (“UCL,” Cal. Bus. & Prof. Code section 17200), and cannot do so given the contractual disclosures. The motion to dismiss is GRANTED for the reasons discussed below. Plaintiff is given leave to attempt to state facts plausibly supporting its breach of contract and UCL causes of action.¹

BACKGROUND

Plaintiff LevelFields is a Virginia corporation that in September 2022 contracted with Reddit to “authorize Reddit to place its Ads on reddit.com.” Compl. ¶¶ 1, 16. That contract was to subject to Reddit’s “IAB Standard Terms And Conditions Version 3.0.” *Id.* ¶ 16.

As alleged by plaintiff, those terms provide:

When serving your Ad, Reddit will use reasonable means to ensure that the Ad is delivered according to your criteria, but Reddit does not guarantee in every instance that your Ad will reach users with your

¹ This matter is appropriate for resolution on the papers. The August 28, 2024 hearing is VACATED. *See* Civ. L.R. 7-1(b).

selected criteria, reach the users that you intended when you selected the criteria, and/or deliver any specific result. You will pay for your use of the Platform after your Ad is delivered based on Reddit's calculation of amounts due and Reddit's measurement of the applicable billing metrics, such as impressions, views or clicks. Amounts due are exclusive of taxes.

You will not and will not authorize any third party to generate invalid or fraudulent impressions, clicks, or other desired actions with respect to the Platform or to use any unauthorized means to extract advertising or performance-related data from the Platform. You acknowledge that third parties may generate impressions, clicks, or other desired actions with respect to your advertisements for prohibited or improper purposes.

Compl. ¶ 16. According to Reddit, the terms quoted in the Complaint are not part of the IAB Terms & Conditions ("IAB T&C") but are instead part of Reddit's "Ad Platform agreement." Reddit asks me to take judicial notice of both documents under the doctrine of incorporation. Plaintiff does not address or oppose judicial notice of those documents, but cites other provisions of the Ad Platform agreement in its Opposition. The request for judicial notice is GRANTED. *See* Ex. A (IAB T&C), Ex. B. (Ad Platform agreement) to Declaration of Mikaela Burkhardt, Dkt. No. 21-3.

LevelFields asserts that "Reddit began charging Plaintiff for clicks, but Plaintiff's system did not log traffic which corresponded with the clicks they were charged for," and that plaintiff requested that Reddit turn over the "click logs" with IP addresses but that Reddit provided only "click logs without IP addresses" while falsely representing to plaintiff that Reddit "was not able to provide IP addresses." *Id.* ¶¶ 17-18. Plaintiff complains that "Reddit is failing to provide minimal levels of security and monitoring of clicks on its platform, in violation of its duties" and as a result "Plaintiff, and other Class Members, were charged by Defendant for fraudulent clicks." *Id.* ¶ 18. It acknowledges, however, that "Reddit appears to be at least partially able to ascertain which 'clicks' constitute 'invalid clicks' or 'click-through fraud' insofar as it has provided a small number of rebates to advertisers who have complained of being charged for 'invalid clicks.'" *Id.* ¶ 13.

LevelFields brings this suit on behalf of a purported class consisting of "all persons residing in the United States who, from May 8, 2020 until the date that notice of this class action is disseminated to the class, paid Reddit for Ads." *Id.* ¶ 19. It asserts a cause of action for "Breach

of Contract” based on the theory that Reddit’s contract incorporated an “implied covenant of good faith and fair dealing that Defendants would not do anything that would have the effect of injuring the right of Plaintiff and the Class to receive the benefits of the contract” that was breached when Reddit collected “fees from Plaintiff and the Class for clicks even though Defendants knew, or should have reasonably known, that the clicks were not actual and actionable. Defendants further breached the contract with Plaintiff and the Class by failing to implement effective oversight over the generation clicks.” *Id.* ¶ 32.

LevelFields also asserts a claim under California’s Unfair Business Practices Act, Cal. Bus. & Prof. Code § 17200 *et seq.*, under the “unfair prong” for the harm to plaintiff and others, under the “illegal prong” for breach of contract, and under the fraudulent prong because defendant’s practices are “likely to deceive” plaintiff and others. *Id.* ¶¶ 38-40.

LEGAL STANDARD

Under FRCP 12(b)(6), a district court must dismiss a complaint if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, the plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* While courts do not require “heightened fact pleading of specifics,” a plaintiff must allege facts sufficient to “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

In deciding whether the plaintiff has stated a claim upon which relief can be granted, the Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008). If the court dismisses the complaint, it “should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not

possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making this determination, the court should consider factors such as “the presence or absence of undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

DISCUSSION

I. ARTICLE III STANDING

Reddit first argues that LevelFields lacks Article III standing because it fails to allege facts plausibly supporting an injury. Reddit points out that LevelFields fails to identify in its Complaint any specific fraudulent clicks or segment traffic it paid for and does not assert that it experienced a rate of click fraud “over and above any representation made by Reddit.” Mot. at 7. Reddit asserts that absent a promise by Reddit to completely eliminate fraudulent clicks – which it did not promise – any harm to plaintiff was caused by fraudsters and not Reddit.

I agree with Reddit that the Complaint is somewhat conclusory. The most plaintiff alleges regarding its alleged injury is that: “Reddit began charging Plaintiff for clicks, but Plaintiff’s system did not log traffic which corresponded with the clicks they were charged for.” Compl. ¶ 17. That may, barely suffice to meet Article III. However, the Complaint suffers from other, more significant deficiencies discussed below.

II. BREACH OF CONTRACT

Reddit moves to dismiss the breach of contract claim, arguing that LevelFields has failed to identify an express provision of a contract that could support an express breach claim based on the conduct about which plaintiff complains: Reddit’s (1) charging for clicks that may have been fraudulent, (2) refusing to produce traffic logs with ISP addresses; or (3) failing to take action to prevent click-fraud.

While the Complaint indicates that a copy of LevelFields’ contract with Reddit is attached, it was not attached. To the extent that the breach of contract claim is based on the language quoted at paragraph 16 of the Complaint, LevelFields does not identify what express promise *in that language* Reddit has violated. It attempts to cure that defect in its Opposition, Dkt. No. 23

(“Oppo.”), highlighting the words that it contends were violated by the failure of Reddit to “deliver” ads. Oppo. at 6. It also clarifies its theory, arguing that “deliver” in its contract or contracts with Reddit means “ads that are clicked by users” because, at least in plaintiff’s own contract or contracts, ads “are billed on a per-click basis.” Oppo. at 1, 3. Based on that clarification, LevelFields argues that Reddit breached its contract in two ways: (1) by charging plaintiff for Ads “not delivered,” meaning when a bot or other fraudulent user of Reddit was not actually “sent to the website designated” in the Ad and (2) by not using “reasonable means to ensure” Ads are delivered to real users. *Id.* at 6-9. Reddit, in its Reply, disputes plaintiff’s definition of deliver: it points to different provisions in Reddit’s IAB T&C and in the Ads Platform agreement (as well as provisions in the IAB guidelines and glossary, for which Reddit has not sought judicial notice) that support its definition of “deliver,” which Reddit contends is simply to publish on Reddit’s site. Reply at 2-4, 6-7. I need not and cannot resolve this despite on this record; plaintiff’s breach claim fails for other reasons.

The first fundamental problem is LevelFields’ failure to identify the specific contractual provisions that underlie its alleged express or implied breach of contract theories. It provides some clarity in its Opposition, but that is insufficient. It must file an amended complaint identifying both the contractual language it believes Reddit violated and whether the breach was express or implied. In addition, because it is now clear that LevelFields’ theory hinges on the definition of “deliver,” it will need to plead sufficient facts in support (for example, identifying specific provisions in its contracts with Reddit supporting its interpretation) to pass the plausibility threshold. LevelFields, therefore, must attach its contracts with Reddit to its amended complaint and identify the specific contractual provisions that support its clarified express or implied breach theories.

In addition, I recognize Reddit’s argument that to the extent LevelFields is alleging a breach of the implied covenant of good faith and fair dealing based on a theory that unidentified contractual language precludes Reddit from charging its customers for clicks which may be fraudulent, that theory arguably runs counter to: (1) the disclosure in the language quoted in the Complaint that requires signatories to “acknowledge that third parties may generate impressions,

clicks, or other desired actions with respect to your advertisements for prohibited or improper purposes” and (2) plaintiff’s acknowledgment that Reddit has a system to credit customers for fraudulent clicks. Compl. ¶¶ 13, 16. *See Prager Univ. v. Google LLC*, 85 Cal. App. 5th 1022, 1039 (2022), review denied (Mar. 15, 2023) (noting an implied covenant claim cannot impose “substantive duties or limits” beyond the terms of the agreement and cannot be used to “prohibit a party from doing” something allowed by the contract) (quotations and internal citations omitted); *see also Singh v. Google Inc.*, No. 16-CV-03734-BLF, 2017 WL 2404986, at *3 (N.D. Cal. June 2, 2017) (dismissing implied covenant claim as an impermissible attempt to rewrite the contract; “Singh could not make such a claim because Google acknowledges the existence of click fraud and the possibility that an advertiser would be charged for fraudulent clicks.”). These arguments may have force, but I will allow plaintiff leave to amend to clarify and support its express and/or implied breach of contract theories and attach the contracts it contends are relevant to its claims.

The breach of contract claim is DISMISSED with leave to amend.

III. UCL

Reddit argues that LevelFields cannot bring a UCL claim based on a contract because it is itself a corporation and not seeking to protect the public in general or individual consumers. *See Linear Tech. Corp. v. Applied Materials, Inc.*, 152 Cal. App. 4th 115, 135 (2007) (dismissing unfair prong claim because, “[i]n these circumstances, where a UCL action is based on contracts not involving either the public in general or individual consumers who are parties to the contract, a corporate plaintiff may not rely on the UCL for the relief it seeks.”).

Linear Tech has been interpreted by courts in this District as preventing large, sophisticated corporate plaintiffs from proceeding under the UCL on contract-based claims. *See, e.g., AdTrader, Inc. v. Google LLC*, No. 17-CV-07082-BLF, 2019 WL 1767206, at *10 (N.D. Cal. Apr. 22, 2019) (“However, courts have held that *Linear Tech.* does not prevent all corporate plaintiffs from proceeding under the UCL where the contract-at-issue does not involve either the public or individual consumers, but rather that *Linear Tech.* only precludes ‘sophisticated corporations’ or ‘large corporations’ from seeking such relief.”); *Grocery Outlet, Inc. v. Naftali, Inc.*, No. 23-CV-05254-CRB, 2024 WL 3540992, at *5 (N.D. Cal. July 24, 2024) (noting UCL

claims based on a contractual relationship may proceed where the defendant’s acts allegedly harmed “a class of ‘not so uniformly sophisticated’ individual plaintiffs,” where form contracts are at issue, or where the “allegedly unfair, deceptive, and unlawful acts plausibly implicated individual consumers or the public in general”).

The Complaint contains no allegations regarding the size or sophistication of LevelFields or others it seeks to represent in this case. Nor does the Complaint contain allegations plausibly showing that the general public or individual consumers – as opposed to corporate entities – would be harmed by the alleged acts of Reddit with respect to click-fraud. The UCL claim is DISMISSED with leave to allege facts demonstrating the claim is not precluded by *Linear Tech*.

If LevelFields attempts to amend this claim to avoid *Linear Tech*, it should address additional issues in order to state an actionable UCL claim. First, it must identify a particular form of relief to which it would be entitled under the UCL. Currently, it seeks equitable restitution and disgorgement. Compl., Prayer for Relief at ¶ 3. But to the extent a UCL claim is based on a contract or contracts – as Levelfields’ current UCL claim is – it cannot seek equitable restitution or disgorgement under the UCL unless it plausibly pleads “why the damages [it] seek[s] under [the] breach of contract claim is an inadequate remedy.” *Rabin v. Google LLC*, No. 22-CV-04547-BLF, 2023 WL 4053804, at *14 (N.D. Cal. June 15, 2023) (collecting cases).²

Second, LevelFields cannot base a UCL unlawful prong claim on a breach of contract. *See Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1044 (9th Cir. 2010) (“a common law violation such as breach of contract [claim] is insufficient” for a UCL unlawful-prong claim); *see also Gill v. Marsh USA, Inc.*, No. 24-CV-02366-RS, 2024 WL 3463351, at *6 (N.D. Cal. July

² I have repeatedly recognized that a plaintiff may satisfy the low bar imposed by *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020) by simply alleging at the motion to dismiss stage that legal remedies are inadequate to proceed with equitable remedies. *See, e.g., Andersen v. Stability AI Ltd.*, No. 23-CV-00201-WHO, 2024 WL 3823234, at *10 (N.D. Cal. Aug. 12, 2024). That is not the same issue here, where the UCL claim is expressly predicated on the breach of contract allegations and no equitable relief (other than restitution and disgorgement) has been identified. To the extent plaintiff intends to seek injunctive relief in an amended complaint under the UCL, plaintiff shall allege inadequate legal remedies *and* plead facts showing what specific injunctive relief it seeks and why it has standing to seek that injunctive relief. *See GiftCash Inc. v. Gap, Inc.*, No. 3:23-CV-02146-WHO, 2023 WL 8006856, at *4 (N.D. Cal. Nov. 17, 2023) (discussing standing for injunctive relief following *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 967 (9th Cir. 2018)).

18, 2024) (following *Shroyer*).

Third, the UCL unfairness-prong claim is deficient because LevelFields fails to identify a policy or statutory basis for the claim or address how Reddit’s provision of a process for crediting customers to address click-fraud does not outweigh the harm suffered by its advertising customers from click fraud. *See Singh v. Google Inc.*, No. 16-CV-03734-BLF, 2017 WL 2404986, at *4 (N.D. Cal. June 2, 2017) (dismissing unfair-prong claim where “Google discloses the risk of click fraud in the Agreement and elsewhere, and provides a process that allows advertisers to receive compensation for charges related to invalid clicks”).

Finally, the fraud-prong claim is deficient because LevelFields fails to satisfy the heightened pleading requirement, including identify the specific misrepresentations it alleges Reddit made to it. *See, e.g., Sinatro v. Barilla Am., Inc.*, 635 F. Supp. 3d 858, 880 (N.D. Cal. 2022) (collecting cases). I recognize that it attempts to identify the specific misrepresentations in its Opposition, Oppo. at 14, but that is insufficient. The misrepresentations must be identified in connection with the fraud-prong claim in an amended complaint *and* it must allege it saw and relied on the identified misrepresentations. *See Brown v. Van's Int'l Foods, Inc.*, 622 F. Supp. 3d 817, 824 (N.D. Cal. 2022 (“To establish standing under the UCL, CLRA, or FAL, a plaintiff must allege reliance on the purported misrepresentations at issue and economic injury as a result.”)).

The UCL claim is DISMISSED with leave to amend.³

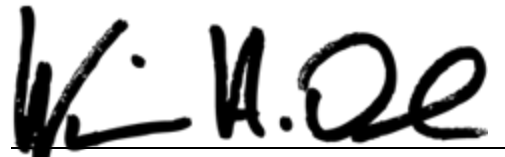
³ Reddit also argues that plaintiff has “waived” any claims based on a theory of harm from click fraud because plaintiff had a method of recourse; seeking credit for fraudulent clicks through the process provided by Reddit. Mot. at 14-15; Compl. ¶ 13; *see also See Free Range Content, Inc. v. Google Inc.*, No. 14-CV-02329-BLF, 2016 WL 2902332, at *13 (N.D. Cal. May 13, 2016 (finding “Payment Dispute Term” governing Google’s AdSense program constituted “a private statute of limitations,” that is applicable would bar plaintiff’s claims related to termination of account and withholding of funds for plaintiffs who did not, within the reasonable 30 days’ time frame, invoke the dispute process). In Opposition, plaintiff argues waiver cannot preclude its claims here apply because a purportedly contradictory provision of Ad Platform agreement, Section 12, provides: “Neither party will be treated as having waived any rights by not exercising or delaying the exercise of – rights under these Terms.” Oppo. at 17-18. Plaintiff also argues that even if Sections 3 and 12 are not contradictory, plaintiff satisfied Section 3’s claim requirement because it filed a “claim” by asking Reddit for click logs and IP addresses, to investigate charges it suspected were inappropriate. Compl. ¶ 18. Given leave to amend discussed above, I will not reach the waiver argument. However, I note that other cases from this District have distinguished the *Free Range* opinion. *See dotStrategy Co. v. Facebook Inc.*, 482 F. Supp. 3d 994, 999 (N.D. Cal. 2020); *see also Moreno v. Sanchez*, 106 Cal. App. 4th 1415, 1430 (2003).

CONCLUSION

Reddit's motion to dismiss is GRANTED. LevelFields is given leave to amend to identify the specific contracts and provisions it believes Reddit breached expressly or impliedly. Plaintiff is also given leave to amend its UCL claim to attempt to fix the deficiencies identified above. Any amended complaint shall be filed within twenty (20) days of the date of this Order.

IT IS SO ORDERED.

Dated: August 27, 2024

A handwritten signature in black ink, appearing to read "W. H. Orrick", written over a horizontal line.

William H. Orrick
United States District Judge